Neutral Citation Number: [2025] EWHC 507 (Ch)

Case No: CR-2023-004587

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
COMPANIES COURT (ChD)

Royal Courts of Justice, Rolls Building
Fetter Lane, London EC4A 1NL

Date: 07/03/2025

Before :

ICC JUDGE MULLEN

- -

In the matter of Webb Estate Developments Ltd

And in the matter of the Insolvency Act 1986

Between :

PARMINDER SINGH DOSANJH	**Petitioner**
- and -	
(1) VALLIPURAM BALENDRAN	
(2) WEBB ESTATE DEVELOPMENTS LTD	**Respondents**

- -
- -

Mr George Woodhead (instructed by **Knights Professional Services Limited**) for the **Petitioner**
Mr Gregory Pipe (instructed by **Logan Kingsley Solicitors**) for the **First Respondent**
The Second Respondent was not represented

Hearing dates: 2nd to 5th December 2024

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Approved Judgment

This judgment was handed down remotely at 10am on 7th March 2025 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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ICC JUDGE MULLEN

ICC Judge Mullen :

1. By a petition presented to this court on 18th August 2023, Mr Parminder Dosanjh, also known as Peter Dosanjh, sought an order for the winding up of Webb Estate Developments Limited ("the Company" or "Webb") on the just and equitable ground. He named his co-shareholder and co-director, Mr Vallipuram Balendran, also known as Victor Balendran, as the first respondent to the petition. The petition relies upon the breakdown of the relationship of mutual trust and confidence between Mr Dosanjh and Mr Balendran and also functional deadlock.

2. Mr Balendran's points of defence accepted that Webb was a quasi-partnership, that there had been a breakdown of the relationship of trust and confidence between the parties and that differences had arisen as to how the business of the Company should be conducted. They further accepted that there would be a substantial surplus available for distribution to the shareholders on a winding up. Mr Balendran's position was that the breakdown of trust and confidence was largely the result of Mr Dosanjh's conduct, including by reneging on agreements that Mr Balendran understood to have been reached. He further alleged that Mr Dosanjh did not come to the court with clean hands, having filed company accounts that were not approved by the board and that he should not be entitled to equitable relief on that basis.

3. He also alleged that the proceedings were being used for an improper collateral purpose and not genuinely to bring about the winding up of the Company. A winding up order would cause him "significant financial losses and hardship" and he pointed to the alternative remedies available, such as an order for the purchase of one party's shares by the other.

4. The position of the parties as set out in the pleadings was broadly maintained at trial. It was submitted on behalf of Mr Balendran that, as the parties had been able to cooperate as to the sale of some of Webb's properties since the presentation of the petition, they could continue to do so to achieve the most advantageous dispositions of the remaining properties before winding up the Company.

Background

5. The parties had from around 2011 carried on a business of real estate management and development as a limited liability partnership called Webb Estate Management LLP ("the LLP"). The LLP owned eight or nine properties around England. The Company was incorporated on 12th February 2018, possibly as a more tax efficient vehicle for conducting the business, and the properties of the LLP were transferred into it. Mr Dosanjh estimated the properties held by Webb to be worth about £6,850,000 in the non-binding estimate of the value of the Company's shares filed during the course of these proceedings. Mr Balendran initially estimated that they were worth rather less, although latterly he has broadly agreed the values.

6. It was at the time of the filing of the last set of accounts for the LLP in 2020 that the parties' relationship began to break down. The principal dispute that arose between the parties was how to treat the monthly payments that they received from the Company and the instructions that should be given to the Company's accountants in this regard. Mr Dosanjh and Mr Balendran each drew £6,000 per month from the LLP from about January 2017. It was agreed that the payments from the Company, as

successor to the LLP, would be £7,000 a month to each of Mr Dosanjh and Mr Balendran. Mr Dosanjh says that it was agreed these were to be treated as repayments of the directors' loans to the Company. Mr Balendran's case is that these were to be treated as reimbursement of "expenses" and that there was no agreement to the contrary.

7. The deadlock as to how the monthly payments should be treated meant that the Company's accounts for the year ending 31st July 2019 could not be agreed. Mr Dosanjh unilaterally filed a set of accounts on 20th November 2020 and continued to file accounts for the following years. While these stated that they were approved by the board, it is not disputed that they were not approved, as the parties continued to be at odds as to the proper treatment of the monthly payments. For his part, Mr Balendran, on 26th May 2022, filed amended accounts for the years ending 2019, 2020 and 2021. These also stated that they had been approved by the board when they had not been so approved.

8. Mr Dosanjh relies on other matters which are said to show that the parties are unable to work together to resolve the difficulties that the Company finds itself in. He points to the creation of a backdated invoice purporting to show the provision of services to the Company by TRS Windmill Limited ("TRS"), Mr Balendran's services company; Mr Balendran's unilateral attempt to dis-instruct the Company's accountants, T&K Accountancy LLP ("T&K") in December 2020; Mr Balendran's attempt to procure the sale of one of Webb's properties, Aldwych House, at an undervalue to a company in which he had an interest; and the failure of the parties' attempts to find alternative ways of separating their business interests.

9. In addition to his contentions about the treatment of the monthly payments, Mr Balendran complains that Mr Dosanjh had agreed to instruct chartered accountants to determine the nature of those payments but refused to accept their advice, had made decisions unilaterally without consulting him, and pulled out of a proposed sale of Aldwych House in March 2022. Prior to trial he proposed a phased sale of the Company's properties, with a winding up to follow on a longstop date. Since the trial, Mr Balendran has indicated in correspondence sent by his current solicitors that he would be willing to purchase Mr Dosanjh's shares.

The just and equitable ground

10. Section 122(1) of the Insolvency Act 1986 ("the 1986 Act") provides:

> "A company may be wound up by the court if—
>
> …
>
> (g) the court is of the opinion that it is just and equitable that the company should be wound up".

11. Section 125(1) of the 1986 Act confers a wide discretion on the court as to the orders that it may make on the hearing of a petition:

> "On hearing a winding-up petition the court may dismiss it, or adjourn the hearing conditionally or unconditionally, or make an interim order, or any other order that it thinks fit…"

In the case of a petition presented on the just and equitable ground, section 125(5) constrains the court as follows:

> "If the petition is presented by members of the company as contributories on the ground that it is just and equitable that the company should be wound up, the court, if it is of opinion—
>
> (a) that the petitioners are entitled to relief either by winding up the company or by some other means, and
>
> (b) that in the absence of any other remedy it would be just and equitable that the company should be wound up,
>
> shall make a winding-up order; but this does not apply if the court is also of the opinion both that some other remedy is available to the petitioners and that they are acting unreasonably in seeking to have the company wound up instead of pursuing that other remedy."

12. A petitioner is required to show that a tangible benefit will be derived from the winding up, usually that there is a surplus of assets over liabilities so that there will be a distribution to members (*Taylor v Whitehall Partnership Ltd* [2023] EWHC 596 (Ch), *per* His Honour Judge Mithani KC (hon. causa), sitting as a judge of the High Court, at paragraph 36).

13. Winding up has been described as a remedy of last resort and an "exceptional remedy to grant in the context of disputes between shareholders" (*Fulham Football Club (1987) Ltd v Richards* [2012] Ch. 333, per Patten LJ at paragraph 56). In *Chu v Lau* [2020] UKPC 24 Lord Briggs JSC, giving the opinion of the board, considered the very similar provisions as to just and equitable winding up applicable under the Insolvency Act 2003 in the British Virgin Islands. He described the circumstances in which such a winding up may be ordered as follows:

> "14. A just and equitable winding-up may be ordered where the company's members have fallen out in two related but distinct situations, which may or may not overlap. First, a winding-up may be ordered to resolve what may conveniently be labelled a functional deadlock. This is where an inability of members to co-operate in the management of the company's affairs leads to an inability of the company to function at board or shareholder level. Functional deadlock of this paralysing kind was first clearly recognised as a ground for a just and equitable winding-up by Vaughan Williams J in *In re Sailing Ship Kentmere Co* [1897] WN 58, a decision on the jurisdiction conferred by section 79 of the (UK) Companies Act 1862 (25 & 26 Vict, c 89).

> 15. Secondly, where the company is a corporate quasi-partnership, an irretrievable breakdown in trust and confidence between the participating members may justify a just and equitable winding-up, essentially on the same grounds as would justify the dissolution of a true partnership. This jurisprudence was developed as an aspect of the law of partnership in England in the mid-19th Century, and is exemplified in the following passage from the judgment of Sir John Romilly MR in *Harrison v Tennant* (1856) 21 Beav 482, at 496-497:
>
> > 'I do not base my decision upon any particular reported case, but upon the principle that the circumstances under which the parties entered into the partnership have, by matters over which they have no control, materially altered, that these altered circumstances have, combined with the conduct of the parties themselves, produced a mistrust which the Court cannot say is unreasonable; and that, taking all these things together, it is impossible that the partnership can be conducted upon the footing on which it was originally contemplated, without injury to all these persons concerned, and that taking all these matters together, it makes this a case in which, in my opinion, it is the duty of the Court to pronounce a decree for the dissolution of the partnership.'
>
> It is clear, for example from *Pease v Hewitt* (1862) 31 Beav 22 and *Atwood v Maude* (1868) LR 3 Ch App 369, at p 373, that a dissolution of a partnership might be ordered even where both parties were to blame for the breakdown in mutual trust and confidence."

14. Lord Briggs recognised that winding up is a remedy of last resort. It is not, however, only available if there is no other remedy. He said:

> "20… The member retains a significant element of choice in the remedy to be sought, even though the court has the last word. As is clearly enshrined in section 167(3) of the 2003 Act, the court carries out a three stage analysis, asking:
>
> > (a) Is the applicant entitled to some relief?
> >
> > (b) If so, would a winding-up be just and equitable if there were no other remedy available?
> >
> > (c) If so, has the applicant unreasonably failed to pursue some other available remedy instead of seeking winding-up?
>
> 21. The legal burden of proof is on the applicant at stages (a) and (b). But it shifts to the respondent at stage (c): see *Moosa v Mavjee Bhawan (Pty) Ltd* (1966) (3) SA 131 at 152 and *Asia Pacific Joint Mining Pty Ltd v Allways Resources Holdings Pty*

> *Ltd* [2018] ACSR 227 at paras 32 and 43. Section 167(3) is in substantially the same terms as was section 225(2) of the UK Companies Act 1948. In *In re a Company (No 002567 of 1982)* [1983] 1 WLR 927, at p 933, Vinelott J held that 'other remedy' in section 225(2) was not limited to a statutory remedy provided only by the court. For example, an unreasonable refusal to accept a fair offer for the applicant's shares might bar relief by way of winding-up. The Board agrees with this analysis."

It seems to me that those principles are equally applicable to section 125(5) of the 1986 Act, which is in the same terms as section 167(3) of the BVI statute.

15. As to the conduct of a petitioner, Lord Cross noted in *Ebrahimi v Westbourne Galleries Ltd* [1973] AC 360 at 387:

> "A petitioner who relies on the 'just and equitable' clause must come to court with clean hands, and if the breakdown in confidence between him and the other parties to the dispute appears to have been due to his misconduct he cannot insist on the company being wound up if they wish it to continue."

In *Harding v Edwards* [2014] EWHC 247 (Ch), Rose J, as she then was, observed:

> "21. Lord Cross made that statement when considering an earlier case where the petitioner had been found by the court to have been stealing the company's money. I do not consider that the obligation to come with clean hands means that a petitioner must be able to show that he or she is entirely blameless for the problems that have overtaken the company. Petitions for winding up on just and equitable grounds usually represent the culmination of a long period of argument and disruption from which it is rare for any one party to emerge as having behaved with exemplary politeness and reasonableness throughout. To set such a high standard would, in my judgment, ignore the very realities of human relationships which Lord Wilberforce regarded as the foundation of the jurisdiction."

Thus the conduct of a petitioner that may justifiably attract criticism when examined some years later in court is not necessarily a bar to obtaining relief under the just and equitable ground.

16. Having set out that brief summary of the applicable principles I will turn to the witnesses.

The witnesses

Mr Vidhyashankar Shanmugasarma

17. Mr Shanmugasarma, also known as Shankar Sharma, is the managing partner of T&K. His statement explains how his firm treated the monthly payments to the directors. His understanding was that there was an agreement between the directors that these would be treated as a reduction in their respective loan accounts. He said that he was unable to accept Mr Balendran's request to treat them as expenses without evidence of such expenses or an agreement by the parties to treat them as such. He also recounted that Mr Balendran made allegations of fraud and breach of professional conduct against T&K. He subsequently brought proceedings against that firm and others in the County Court.

18. When cross-examined by Mr Pipe, counsel for Mr Balendran, he accepted that the accounts ultimately filed by Mr Dosanjh had been prepared by his firm on the basis of Mr Dosanjh's instructions, in accordance with the agreement that they understood to have been reached as to how payments were to be treated. Requests for information from Mr Balendran went unanswered. Mr Shanmugasarma emphasised that his firm did not file the accounts itself but provided them to Mr Dosanjh with a "health warning". He regarded it as the responsibility of Mr Dosanjh to provide them to Mr Balendran.

19. Mr Shanmugasarma was somewhat defensive and did not always appear to understand the question. Nor was he a wholly disinterested witness. He accepted that T&K carried out work for Mr Dosanjh's other companies and candidly said that they were hoping to carry out work for him personally too. I consider, however, that he was an essentially honest witness, who found himself in a difficult position when confronted with the disagreement between the directors of Webb. Nonetheless, I do not have reason to doubt his evidence insofar as it is relevant to the decisions that I have to decide. In that regard, I have to say that, in large measure, it was not of great relevance. The emails to which he was referred in cross-examination largely speak for themselves and either consist of emails sent on behalf of his firm, setting out the firm's position, or were emails between Mr Dosanjh and Mr Balendran, to which he was copied in.

Mr Peter Dosanjh

20. Mr Dosanjh was a forthright witness and quick to correct counsel during cross-examination if, in his view, an incorrect proposition had been put to him. He was not always direct in his responses to questions, particularly with regard to whether the accounts filed by him could be regarded as "false". There is no doubt that Mr Dosanjh did in fact file accounts that were false in the sense that they had not, as they stated, been approved by the board, and were prepared without input from Mr Balendran so that they ran the risk of being deficient in other respects too.

21. I have no doubt that Mr Dosanjh is a man who is alive to his own financial interests and seeks to advance them. As I shall explain, he saw an opportunity to put some pressure on Mr Balendran to agree to his preferred way of treating the monthly payments from the Company. I am satisfied however that his evidence was honest and that he was seeking to assist the court and tell the truth as he saw it.

Mr Victor Balendran

22. Mr Balendran is a little hard of hearing and I bear that in mind when considering the way in which he gave evidence. Everybody in court kept their voices up but Mr Balendran's difficulty hearing may well explain why he spoke over counsel on a number of occasions when giving his answers, including on occasions when counsel sought to return him to the question asked. Mr Woodhead, counsel for Mr Dosanjh, nonetheless characterised Mr Balendran as evasive. I have to agree. I also agree with Mr Woodhead's suggestion that this might not have been intentional but rather a result of the fact that he feels very strongly about this case and that this led to him responding to questions with long accounts of the matters that he felt were important, saying what he wanted to say rather than responding to the question. He repeatedly failed to give a straightforward answer to a straightforward question. He was vague in his answers and difficult to pin down.

23. It was also a frequent feature of his evidence that he expressed a willingness to be flexible over the difficulties facing the Company. It was quite clear to me however that his flexibility only extends to being willing to agree on his own terms. As I shall explain, he commissioned a report from a firm of accountants as to the proper treatment of the monthly payments on the basis of his own instructions, which were entirely one-sided and did not acknowledge the detail of the dispute at all.

24. Another feature of his evidence was his minimisation of the difficulties that Webb is facing, which he repeatedly described as "minor matters". An example of his approach was when he was questioned by counsel about liability orders made in respect of Aldwych House. When this was described as a "dispute" with Test Valley Borough Council as to Webb's liability for non-domestic rates he said that he did not have a dispute. He seemed to think that a dispute could not exist because he was plainly right.

25. In my view, Mr Balendran believes himself to be in the right and is unwilling to countenance any suggestion to the contrary. His dogmatic approach to the dispute with his fellow shareholder and his conviction that he alone is both right and reasonable cause me to treat his evidence with caution.

The division of labour between the parties

26. It is not necessary to explore the conduct of the Company's day-to-day business in any detail. It is not in dispute that Mr Balendran took on the lion's share of the management of Webb's properties. Mr Balendran has during Webb's life been retired from his former employment. Mr Dosanjh's evidence was that Mr Balendran told him "time is all I have". It was not clear to me during his oral evidence whether Mr Balendran accepted that he had made that remark but he accepted that he enjoyed managing the properties and he does not seem to have objected when this remark was referenced in email correspondence. Mr Dosanjh has a number of other business interests and was not involved in the management of the Company's business on a day-to-day basis.

27. It seems that Mr Dosanjh did suggest reducing the burden on Mr Balendran. On 17th December 2019 he emailed Mr Balendran and said:

> "We have some capacity to take on additional workload at Monarch House.
>
> If it assists you, we can split the properties belonging to Webb Estate at random and I can pass this on to the staff here to manage. To be fair, we can simply put the names of properties in a hat, and choose at TKA's offices at random and this way we can split these.
>
> However, as always, if you prefer for the time being to continue to manage these, then we shall leave things as they are."

Mr Balendran did not accept this. He replied:

> "I [would] like to sell the assets a s a p and move on. Someone taking over the management is not helpful at this stage
>
> Would you be interested in buying Sovereign House for the price valued by the bank (£675k)?
>
> Currently on the market for £750K"

Mr Balendran's intention, some five years before trial, appears to have been to draw Webb's business to a close.

28. Mr Dosanjh replied:

> "Thanks for your email. I note that for the time being, you are happy to continue to manage the business by yourself with of course the usual assistance from us in sending out invoices etc. I am in agreement therefore, as I have been in the past, to allow you to continue in this fashion.
>
> I am not in favour of the bank valuations as I have advised in the past. I am in agreement however in selling the properties.
>
> Let's take Sovereign House to auction."

In fact it was another four and half years before Sovereign House was sold.

29. Mr Dosanjh emailed Mr Balendran 20th January 2020 and said:

> "As you know, I have asking you regularly in the past if you would like us to manage half or all of the properties belonging to Webb Estate Developments Ltd but you have always advised that 'time is all you have' and therefore declined my offer.
>
> I thought I would make the offer again. Therefore, if you would like me to give you a hand with the management of half of the portfolio in its entirety then I can do that. Likewise, if you would like me to operate the bank account then I can do that

> too. If you prefer to keep things as they are then that's fine too and I am happy with that."

Again, this offer does not seem to have been accepted.

30. I accept that Mr Balendran did undertake much of the property management work. He did so because he was retired and wanted to do so. I cannot accept his account of the time he spent doing so however. He claimed that he spent 40-50 hours a week. This would equate to an eight to ten hour day, five days a week. It is difficult to see how these properties could have required such a time commitment and there is no evidence that I have seen to support that estimate. I am satisfied that this is significantly overstated, though I accept that there may have been times when Mr Balendran would have been required to focus on the Company's business fairly intensively.

The nature of the monthly payments made to the directors

31. The number of hours spent on the business by Mr Balendran is not really the central issue. Whatever part they played in the day-to-day business of the company, Mr Dosanjh and Mr Balendran agreed that they would take £6,000 a month from the LLP, and latterly £7,000 a month from the Company. The question is what the nature of those payments was. It is this question that led to the inability to agree the Company's accounts and, to answer it, it is necessary to look at the constitutional arrangements of Company and the LLP that preceded it.

32. During the period in which the business was carried on by the LLP, the partnership agreement between the parties provided:

> "DRAWING
>
> 9. Each Partner will be entitled to draw against their share of the profits in such amounts and at such time as will be agreed by the Partners.
>
> FINANCIAL DECISIONS
>
> 10. Decisions regarding the distribution of profits, allocation of losses, and the requirements for Additional Capital Contributions as well as all other financial matters will be determined by a unanimous vote of the Partners.
>
> PROFIT AND LOSS
>
> 11. Subject to any other provisions of this Agreement, the net profits and losses of the Partnership, for both accounting and tax purposes, will accrue to and be borne by the Partners in equal proportions.
>
> COMPENSATION FOR SERVICES RENDERED
>
> 12. No Partner will be compensated for services rendered to the Partnership, except reimbursement for expenses directly related to the operation of the Partnership."

Mr Balendran operated the bank account and made these payments with the reference "expenses". This is unlikely to be an accurate description of the payments of £6,000 a month. There is nothing to suggest that either Mr Dosanjh or Mr Balendran incurred significant expenses "directly related to the operation of the partnership" on a monthly basis that would allow these payments to be classified as such, although I should say that I do not have a full account of the LLP's financial history. They undoubtedly contributed their time and skill, but compensation for those services was excluded by the agreement.

33. The Company's articles of association also contain provisions as to how Webb is to be managed, the circumstances in which the directors are to be remunerated and the payment of expenses. Article 8 is headed "unanimous decisions" and provides:

> "(1) A decision of the directors is taken in accordance with this article when all eligible directors indicate to each other by any means that they share a common view on a matter.
>
> (2) Such a decision may take the form of a resolution in writing, copies of which have been signed by each eligible director or to which each eligible director has otherwise indicated agreement in writing.
>
> (3) References in this article to eligible directors are to directors who would have been entitled to vote on the matter had it been proposed as a resolution at a directors' meeting.
>
> (4) A decision may not be taken in accordance with this article if the eligible directors would not have formed a quorum at such a meeting."

34. In relation to remuneration of directors, article 19 provides:

> "(1) Directors may undertake any services for the company that the directors decide.
>
> (2) Directors are entitled to such remuneration as the directors determine—
>
> (a) for their services to the company as directors, and
>
> (b) for any other service which they undertake for the company.
>
> (3) Subject to the articles, a director's remuneration may—
>
> (a) take any form, and
>
> (b) include any arrangements in connection with the payment of a pension, allowance or gratuity, or any death, sickness or disability benefits, to or in respect of that director.

> (4) Unless the directors decide otherwise, directors' remuneration accrues from day to day.
>
> (5) Unless the directors decide otherwise, directors are not accountable to the company for any remuneration which they receive as directors or other officers or employees of the company's subsidiaries or of any other body corporate in which the company is interested."

35. Finally, in relation to expenses, article 20 provides:

> "The company may pay any reasonable expenses which the directors properly incur in connection with their attendance at —
>
> (a) meetings of directors or committees of directors,
>
> (b) general meetings, or
>
> (c) separate meetings of the holders of any class of shares or of debentures of the company, or otherwise in connection with the exercise of their powers and the discharge of their responsibilities in relation to the company."

36. It is well established that a director does not have a right to remuneration otherwise than as provided for in a company's constitution or approved by a company's members (see, for example, Lord Templeman's discussion of the principles in *Guinness plc v Saunders* [1990] 2 AC 663, at 689 to 696, and that of Lord Goff of Chieveley at 699 to 701). Mr Balendran's written evidence was that these payments were not in fact remuneration but instead that there was an express agreement to treat the payments as "expenses". He said at paragraph 11 of his witness statement:

> "On 2 March 2018 at a shareholder meeting by conference call in the presence of Mr Kiru of T & K Accountants, the Petitioner agreed to our both receiving £7k per month as expenses. The Petitioner now alleges that there was no such agreement."

In oral evidence Mr Balendran seemed to think that there was a conference call between the shareholders and that they then called Mr Kiru. He was somewhat confused about what happened. There is no record of this and Mr Kiru has not been called to give evidence.

37. More importantly, there is, again, simply no basis, that I have seen, on which these payments can be characterised as "expenses" in the sense of repayment of expenditure of the directors for the benefit of the Company. They were not. These were regular, round-figure payments that did not fluctuate to reflect any expenses incurred over the course of the month and there is no evidence of expenditure by the directors that fell to be reimbursed. There are only three other ways properly to characterise these payments to the parties as directors or shareholders. First, they could have represented compensation for the directors' time and effort, in which case they were directors'

remuneration, if such remuneration had been approved as required by the articles. Secondly, they could have represented dividends from distributable profits if declared in accordance with the Companies Act 2006. Finally, they could have been repayments of the directors' loans to the Company.

38. The way in which they should be characterised is assisted by the exchange of emails between the parties in relation to the filing of the LLP's last set of accounts in 2020. The email exchange as to the filing of the accounts began on 2nd March 2020. Mr Balendran wrote to T&K and Mr Dosanjh with the subject "LLP Final Accounts" saying:

> "Dear All,
>
> Have we filed the final accounts?
>
> Victor"

Mr Bhagya Kodiyeri of T&K replied:

> "Hi Victor,
>
> I tried to speak to him over the phone, but the phone is not ringing.
>
> Best Regards,
>
> Bhagya"

Mr Balendran's reply to this was directed at Mr Dosanjh:

> "Hi Peter
>
> Today is the last day.
>
> Would you be able to sign today or would you like me to go and sign at 3 pm?
>
> Please respond
>
> Victor"

39. Mr Dosanjh replied on 3rd March 2020 and made three points as to the future conduct of Webb's affairs. Mr Balendran responded on 4th March 2020 with a substantive reply and a marked-up version of Mr Dosanjh's email, with red annotations beneath the original text. I reproduce Mr Balendran's email, incorporating his marked-up version of Mr Dosanjh's email, below, representing Mr Balendran's red annotations by italic text:

> "Good Morning Peter,
>
> I am sorry that I do not understand all this. On one hand you say you do not want to pay excess tax and at the same time you

> want T & K to report excess profits. Even this time, although there is no profit, T & K spent extra time to report a profit of £17.5k. In any case I need to move on, please see my comments in RED
>
> …
>
> Good afternoon Gentlemen
>
> I am sorry I could not revert back to you earlier.
>
> I am happy for the LLP Accounts to be filed as they stand subject to the following agreement by Victor:
>
> 1. Looking to the future, for the Accounts for Webb Estate Developments Ltd, we will not raise invoices for expense in our personal names. The reason for this A) It is incorrect to do so and b) I will end up paying a higher rate of tax because I am higher rate tax payer.
>
> *It was not my idea to raise personal invoice. It was requested by T& K. I am open to any ingenious suggestion.*
>
> 2. The £7,000 being drawn at the present time, in our personal names will be treated as either A) dividend payment or b) re-payment of our respective loans to the company.
>
> *"Repayment of our respective loans" ok with me, is it feasible?*
>
> 3. We will not set up another company (such as a service company) because it is of zero benefit and I am not prepared to entertain this idea and create more complications.
>
> *I did not ask for a separate company. I need to have a separate service account. When we sell an asset (eg Sovereign House, or Aldwych House) the buyer will ask for service account. Selling agent will ask for service accounts. We have service level agreements with clients and they can ask for a copy of the service accounts. All I need is a simple separate service account, again I am open to any ingenious suggestion.*
>
> If Victor can send an email confirming the above 3 points, then I am happy for these for the LLP Accounts to be filed.
>
> *Could we now just move on please."*

It is notable here that Mr Balendran did not comment on point 2 of Mr Dosanjh's email to say that there was already an agreement as to how the payments should be treated. It seems that there had been some previous discussion about the possibility of submitting personal invoices and that this had been raised by T&K. Mr Balendran is however content for the monthly payments to be treated as repayments of the loan if "feasible". Indeed, he does not seem to have raised the existence of a prior agreement

about how these were to be treated until his email of 30th July 2020, to which I refer below.

40. Mr Dosanjh replied on 7th March 2020:

> "Thanks Victor - sorry you have been unable to reach me.
>
> Following your comments, please can we treat the £7k per month as Re-Payment of Loan please and amend the Accounts?
>
> Thanks."

41. Mr Shanmugasarma of T&K intervened at this point and, on 9th March 2020, queried what Mr Dosanjh was asking for:

> "Just to get us clarified, are you proposing LLP Accounts to be amended as 'Re-Payment of Loan'. We are under the impression that 'taking as dividends OR setting against director's loan ifs [*sic*] for LTD company. We are yet to prepare the Accounts for LTD company.
>
> Once LLP cessation Accounts is filed with the companies house, using the closing balances f[or] LLP, we will be completing the LTD company Accounts.
>
> Look forward to hearing from you."

Mr Balendran chased Mr Dosanjh again in the afternoon of the same day:

> "Again I am unable to speak to you.
>
> Please refer below, we are not sure what you want.
>
> Could you let T & K to file the LLP accounts please, it is very urgent."

Mr Dosanjh's email reply came a few minutes later:

> "Sorry, I am in and out of meeting therefore unable to speak on the phone.
>
> Our exchange of emails is simple enough. Please refer to my last email to everyone timed 14.15 this afternoon. For clarification, I said the following in my email:
>
> Thanks Victor. I am also trying to avoid wasting time in the future. It actually makes sense for us as it will clarify matters. Please can you send one sentence in your email as this will assist us going forward.
>
> Please just copy and past the following in an email:

> **I confirm that we should treat the £7k per month (or any other drawings) as repayment of director's loan when we come to prepare the accounts for Webb Estates Developments Ltd**."

Mr Balendran did indeed copy the bold text into an otherwise blank email and sent it a few minutes later. It is not obvious at first glance but he had added some additional wording to the subject line. The email to which he was responding had the subject line "RE: LLP Final Accounts". As amended by Mr Balendran it read "RE: LLP Final Accounts - Why are you asking this?"

42. It appears that Mr Dosanjh did not in fact notice the addition of these words. He replied shortly after Mr Balendran's email to say:

> "That's very clear Victor; thank you.
>
> TKA, unless you have any other concerns/issues, I am happy for the LLP accounts to be filed."

It was suggested by Mr Pipe to Mr Dosanjh that Mr Balendran was not providing the confirmation as to the treatment of the payments to them that Mr Dosanjh sought but querying why he had sought it. I have no hesitation in rejecting that. Mr Dosanjh was plainly trying to obtain a straightforward confirmation from Mr Balendran as to how those sums were to be treated. Having heard Mr Balendran's evidence, and seen the difficulty in obtaining a direct answer from him, I have to say that I am not surprised that Mr Dosanjh wanted a plain and unequivocal statement as to Mr Balendran's position. Mr Balendran did not respond to Mr Dosanjh's reply to say that he had misunderstood and that he was not agreeing but querying why he was being asked to provide such confirmation. Given Mr Balendran's willingness to raise vociferous objections I have no doubt that if he had intended his reply to be anything other than assent he would have made that clear when Mr Dosanjh thanked him for his answer and plainly treated it as the confirmation that he sought. Mr Balendran himself said in evidence that he was just doing what was necessary to procure the filing of the accounts, not that he was querying the request.

43. I reject Mr Pipe's submission that Mr Balendran's apparent assent was rendered equivocal by Mr Balendran's addition of the words "why are you asking this" to the subject line. Mr Balendran accepted in evidence that he had agreed in order to procure that the accounts for the LLP were filed. The only way in which these emails can be read is as assent to what Mr Dosanjh was proposing – an indication that they shared a common view for the purposes of article 8 of the articles of association. It may well have been that Mr Dosanjh was using the pressure of the imminent deadline to extract a firm agreement from Mr Balendran and seeking an agreement that was most tax efficient for him. Whatever Mr Balendran's motivation might have been in agreeing to that, in my judgment Mr Balendran agreed to do as Mr Dosanjh asked and confirmed his agreement as to the treatment of the monthly payments.

44. On 24th July 2020 Mr Kodiyeri emailed Mr Dosanjh, copying in Mr Balendran, with regard to the accounts of the Company for the year ending 2019. He said:

> "Please see the attached draft accounts. Victor had provided the following expenses in his excel worksheet as expenses incurred for both directors. I have accounted for all the expenses excluding the motor repairs. We cannot account for motor repair since the company doesn't own a vehicle. So could you please send me the business mileages, then I can account as travel expenses.
>
> [Table removed]
>
> Your corporation tax based on the draft account is £30,971.00. Also, the profit available to distribute as a dividend is £120,919.00. But I can see that both directors had withdrawn £141,000.00 each. This has utilised the directors capital available and overdrawn by £158,670.00.
>
> I can declare a dividend of £120,919.00 to cover the part of the overdrawn amount and the remaining you may have to pay back to the business."

Mr Balendran replied on the same day:

> "Thanks for the draft accounts, I agree with the numbers.
>
> Regarding the drawing of £141,000 by both directors, both directors agreed to draw from the directors capital account without any tax implications.
>
> Reduce £141k from our capital account. Do not declare dividend."

Mr Koiyeri responded later that day:

> "Please see the attached updated accounts.
>
> I have updated the director's account as instructed. The Corporations tax is £30,971.00 as calculated earlier. If both directors are happy with the accounts, please sign it and send it back to me for submission. We will file it as soon as the invoice has been settled."

Mr Balendran immediately responded to Mr Koiyeri:

> "You have not deducted the £141k drawings?"

Five hours later he followed up with further email to Mr Koiyeri at 8:22pm on 24th July 2020:

> "Please find attached invoice for the money I took out as expenses.

> Kindly ensure that all money took out expenses accounted for as you did last year.
>
> Just keep it simple please"

45. The invoice is dated 2nd July 2019 and is in the name of TRS. It sets out the following services purportedly provided to Webb:

> "Description:
>
> 1. Asset management service
> for the period 1st August 2018 t[o] 31 July 2019 £32500.00
>
> 2. Service management service for
> Sovereign House. Aldwych House, & Acton Gate £38000.00
>
> Total payable £70500.00"

The metadata from the file shows however that this invoice was created at 8.16pm on 24th July 2020, some six minutes before it was sent attached to this email. It is not alleged, even on Mr Balendran's case, that TRS in fact provided any services to the Company. This invoice is plainly an after the event creation, designed to give the impression that TRS had invoiced Webb within the previous tax year for services that it had provided to the Company.

46. Mr Shanmugasarma at T&K replied to Mr Balendran on 25th July 2020:

> "Good morning. Thank you for the information & instruction.
>
> As I mentioned in the mail yesterday, Peter did not agree to put an invoice to cover his drawings.
>
> Therefore we again kindly request that you both agree on this matter & give us the instruction.
>
> We will be unable to proceed further as we are getting contradicting instruction from both directors."

47. Mr Balendran replied and his reply was subsequently annotated in a further reply from Mr Shanmugasarma on 30th July 2020. I reproduce that later email, with Mr Shanmugasarma's comments represented by italic text:

> "Sorry for the delay in coming back to you.
>
> You already have accurate account of the money paid out to all shareholders.
>
> As I understand the HMRC rules~:
>
> 'If shareholder take money from the business (money that belongs to the business) then the shareholder pay any tax due' NOT THE COMPANY.

> As you and my personal accountant advised I have already submitted to you an invoice for the money I took out, therefore I comply with the above.
>
> *Regarding providing an invoice from another company (TRS) for the services provided to Webb Estate by the director (Victor), it is conceptually acceptable.*
>
> *However to support this, HMRC would request a service contract entered into between both Webb Estate & TRS effective from the date taking 7K a month.*
>
> *A contract signed by the companies dated today will not be effective retrospectively from 2019. Therefore we would recommend both directors agree on this point and keep a document supporting the monthly takings.*
>
> *Failing to keep appropriate documentation will result in HMRC re-assess and charge CT for the full amount of profit with penalty.*
>
> *Therefore we are not advising to raise an invoice from TRS without having appropriate service contract & the contract will not be effective retrospectively.*
>
> *As we are not accountants for TRS, we wish not to advise matters relating to TRS.*
>
> I WILL BE PAYING TAX, not the company.
>
> Could you kindly submit the account before the deadline please *– we will not be able to file the Accounts without both directors signing*.
>
> If any shareholder do not wish to comply with the above then we could deal with it later."

Mr Shanmugasarma's discomfiture is evident. He rightly points out that the directors could not retrospectively decide how to treat the payments and create a fiction as to the provision of services by a third party.

48. Mr Dosanjh raised further objections in his response on the same day. He said:

> "I have not and will not be authorising TRS or any other Company to carry out any work on behalf of Webb Estate in connection with the monthly drawings by the Directors. The monthly drawings are simply a re-payment of the loan advanced by the directors to the Company. As such they should not attract any tax payments.

> If this nonsense persists, I will be forced instruct my Solicitors to write to HMRC and advise them of this potential fraud by one of the Directors of Webb Estate Developments Ltd.
>
> I sincerely hope that this will not be necessary."

Mr Balendran replied, again on 30th July 2020, suggesting a prior agreement for the first time:

> "To clarify,
>
> Both share holders agreed and took £7k a month from the company.
>
> For this I managed the business, cashflow, asset management and service management. I have spent about 50 hours a week to perform all these duties for the last ten years.
>
> Before submitting the first ltd company accounts, after a long discussion it was agreed that I should raise an invoice to account for the money I took from the company. Which I did.
>
> This time also I raised an invoice same as before.
>
> Now I failed to understand why I need another authorisation to do what was already agreed. What is this nonsense about fraud? If the HMRC rules requires that I should raise an invoice in my personal name then that is fine with me.
>
> What is required from both shareholders is to account for the money they took and each shareholder to pay tax for it.
>
> I expect both shareholders to comply fully with the HMRC rules.
>
> I trust I have made my position clear
>
> Victor
>
> Ps Using indecent language needs to stop it is not acceptable and I will not put up with it."

Mr Balendran's description of the payment as referable to time he spent managing the business makes it clear that these payments were not in any sense the reimbursement of expenses, but, if anything, in the character of remuneration for his work as a director. Neither does this email suggest any agreement that TRS had provided, or that it was agreed that it would provide, services to the Company and the invoice plainly came as a surprise to Mr Dosanjh and Mr Shanmugasarma. I am satisfied that there was no agreement between the directors that they would be remunerated for their services and no agreement that TRS would provide services to Webb.

49. Mr Shanmugasarma replied:

> "Good morning. Thank you for the information & instruction.
>
> As I mentioned in the mail yesterday, Peter did not agree to put an invoice to cover his drawings.
>
> Therefore we again kindly request that you both agree on this matter & give us the instruction.
>
> We will be unable to proceed further as we are getting contradicting instruction from both directors."

50. On 24th November 2020 Mr Dosanjh asked Mr Balendran to stop the monthly drawings. The email said:

> "Please can we STOP the monthly drawing of £7k with immediate effect?
>
> This is causing a lot of confusion.
>
> Going forward, the only way to treat this would be treat it as capital re-payment.
>
> Alternatively, (and I am only saying this to be helpful to you), if you would like for both of us to be paid a fee for the work that we are doing then the only way I would accept this is if we strictly adhere to the following.
>
> 1. Have a written agreement as to how much we will extract from the business by way of a fee for the work that we do. You can nominate TRS for this if you like and I can nominate an entity of my choice. This written agreement to be witnessed by TKA and lodged with them for reference in case there is an enquiry from HMRC.
>
> 2. Allow me to handle the banking transactions as you have done these for several years.
>
> If you do not agree to this, then please don't bother responding."

51. Mr Balendran's response was to refuse to stop the payments and a continuing insistence on characterising them as expenses:

> "It would be impossible for me to simply stop taking expenses.
>
> I am very willing to come to an agreement if you could please contact Sonia with your amendments to her proposed standard shareholder agreement."

Mr Dosanjh again asked:

> "Please STOP the monthly payments. We are breaking the law."

Mr Balendran however was adamant. He replied:

> "We have been taking monthly payments for 3 years, if it is now illegal then I would not know.
>
> I need to take the December payment. For the following months:
>
> Perhaps could we meet and discuss your alternate proposal?"

52. By an email sent on 4th December 2020, Mr Balendran purported to terminate T&K's appointment as the Company's accountants. Mr Dosanjh replied on the same day to instruct them to disregard Mr Balendran's email on the basis that it was sent without his authority.

53. Mr Balendran then instructed a firm of accountants, ASP Chartered Certified Accountants ("ASP"), to advise as to the proper treatment of the monthly expenses. This was not a joint instruction as suggested in Mr Balendran's witness statement. They advised that, based on the invoice, £70,500 should be reported as a property management expense and an equivalent sum should have been reported as repayment of Mr Dosanjh's director's loan. That conclusion is unsurprising as it is apparent from the letter itself that they had been instructed that the parties had agreed that Mr Balendran draw "expenses for [his] services". They do not appear to have been informed of the dispute about this. Indeed, the letter begins by referring to "the treatment of your invoice that you issue[d] on 2/7/19 for your services to Webb Estate Developments". This invoice was not issued on that date but created in the following year. It seems that ASP were misled as to what had happened in relation to the treatment of the monthly payments. This is a clear example of Mr Balendran being determined to get the answer he wants rather than approaching the matter as a question to be clarified by expert advice. It is unsurprising that Mr Dosanjh did not accept ASP's approach.

54. Mr Dosanjh proposed a meeting and it was agreed that this would take place on 14th December 2020. Mr Balendran suggested the following agenda:

> "Yes, Monday 14th Dec at 11.30 am fine with me.
>
> Emergency shareholder meeting to resolve the following:
>
> • Recklessly not filing the accounts on time.
>
> • Delayed for several months and brought company to near bankruptcy.
>
> • Companies credit rating, normal operation of the business severely affected, shareholders need to ensure that this will not happen again.

> • One shareholder accused of fraud, fabrication, etc, company need to investigate and take action if they are true, if not confirm as false."

55. Mr Dosanjh's reply was in similarly point-scoring terms:

> "Thank you for your email confirming the date and time of the meeting and your Agenda. I would like to add the following to the Agenda.
>
> 1. Recklessly not filing the accounts on time.
>
> 2. Delayed for several months and brought company to near bankruptcy.
>
> 3. Companies credit rating, normal operation of the business severely affected, shareholders need to ensure that this will not happen again.
>
> 4. One shareholder accused of fraud, fabrication, etc, company need to investigate and take action if they are true, if not confirm as false.
>
> 5. Victor to relinquish the management of the business together with the banking transactions. A change now is fair and justified.
>
> 6. Victor to stop taking out monthly payments of £7k unless these are taken as repayment of capital. This will address any cash flow problems.
>
> 7. Victor to desist from carrying out arbitrary decisions such as terminating the services of our professional advisers or instruct new advisers.
>
> 8. Victor to desist from interfering with the work of our professional advisers as this causes undue delay."

56. Of significance there is that Mr Dosanjh once again objected to the payments of £7,000 unless they were treated as repayment of loan capital. Mr Balendran however carried on as before. He said that he was simply adhering to the partnership agreement and that Mr Dosanjh was seeking to do something that would not benefit either of them. The parties exchanged emails after the meeting that demonstrate entirely different recollections of what was agreed, or not, at the meeting. I do not need to explore that difference of view here.

57. The parties each took it upon themselves to file accounts for the Company without authority from the other. Mr Pipe however submits that the question of the proper form of the accounts will be resolved by this judgment. It is plain from what I have said that I am satisfied that there was no agreement that the payments would be treated as expenses. They were not expenses and could not have been treated as such. Nor was it agreed that any services would be provided to Webb by TRS. In my

judgment the exchange of emails in March 2020 represented the assent of the directors under the articles to treat the monthly payments as repayments of the loans that they had made to the Company. I do not, however, consider that that resolves the deadlock between the parties. Mr Pipe cross-examined Mr Dosanjh as to other errors in the accounts filed by him in the absence of his own client's input into their contents, in particular VAT. Mr Balendran in his own evidence said that the turnover figures in the accounts filed by Mr Dosanjh were also wrong. It is clear to me that the resolution of question of how the monthly payments are to be treated does not resolve the question of the accuracy of the accounts more generally.

58. In the run up to the trial the accounts remained the principal sticking point between the parties. On 8th November 2024, Knights Professional Services Limited ("Knights"), acting for Mr Dosanjh, wrote to Mr Balendran, then acting in person, and said:

> "Your recent correspondence have only demonstrated the extent of the deadlock between the shareholders. As a result of this, our initial proposal that the parties agree to voluntarily engage in a process of Members Voluntary Liquidation is, in our view, likely to be fraught to challenges.
>
> In your email of 17:37 on 6 November 2024 you state that *'I cannot and will not allow the company to shut down with one set of false accounts. I will not be part of this very serious matter.'*
>
> In your email of 10:22 on 7 November 2024, you state that the *'Company cannot go into liquidation or wind up before the accounts matter is resolved'*.
>
> Your recent correspondence suggest that you appear to remain confused about the purpose and reason for the just and equitable winding up petition. It is precisely because the parties are unable to reach agreement on fundamental functional matters (such as the Company accounts) that the Company must, in our view, be wound up."

As recently as 15th November 2024, shortly before trial, Mr Balendran emailed Knights to say:

> "I cannot agree to windup a company with two sets of accounts filed with Companies House since 2019. This matter is very serious, will have very serious implications to both shareholders. I have offered number of proposals over four years, but all refused.
>
> I have instructed my lawyers to complain against T & K and to make an application to postpone the hearing."

This was followed by a complaint from his solicitors to T&K on 20th November 2024. There are other issues between the parties from which it is apparent that the

management of the Company remains deadlocked, as I shall explain below.

The proposed sale of Aldwych House

59. Deadlock is not the only ground on which winding up is sought. The petition relies on a breakdown in trust and confidence. That is admitted and, indeed, is amply demonstrated by the exchanges with respect to the accounts, which have provoked hostility between the parties up to and including trial. There is a later exchange between Mr Dosanjh and Mr Balendran concerning the sale of one of the Company's properties, Aldwych House, which similarly contributed to the loss of trust and confidence between the parties, to the extent that it was not irretrievably lost already.

60. Aldwych House is an office block in Andover. There was a sale proposed in early 2022 but this fell through. Mr Balendran wrote to Mr Dosanjh on 3rd February 2022 as follows:

> "As you know the buyer pulled out at the last moment. Company needs to sell this a s a p to avoid liabilities.
>
> We have another buyer will pay £830K (same price as before). He will pay £415k to buy your shares. Buyer will not be a shareholder of WEDL. Will not have any association with WEDL after sale.
>
> Lloyds bank in agreement to this.
>
> Will you agree?"

61. What is not mentioned in this email is that the buyer was H&B Services London Limited ("H&B"). Mr Dosanjh replied to Mr Balendran to ask to speak to the buyer about a share purchase. Mr Balendran replied on 3rd February 2022 and revealed the identity of the buyer:

> "Buyer is no tax expert.
>
> Buyer is H&B London Services ltd, where I am 50% shareholder.
>
> If the buyer buys 50% of your share, then that completes the sale.
>
> If you agree for the sale then we will find an accountant who would find the best way to do this."

Mr Dosanjh replied on the same day:

> "It would have been better if you were open about this before.
>
> I am happy to sell this property to you and your Partner. The only Accountants I wish to use are TKA, who are WEDL's existing Accountants."

Mr Balendran had not been transparent in his first email referring to "another buyer". That suggests a third party and it is not until Mr Dosanjh asked to speak to the buyer that the connection was revealed.

62. Neither did Mr Balendran mention that H&B had instructed architects to draw up plans for the conversion of the building into flats prior to this point. The plans in the bundle are themselves dated February 2022 and Mr Balendran said that the plans took a month or two to prepare although, when it was put to him that he had instructed architects without disclosing this to Mr Dosanjh he maintained that he had only instructed the architects after Mr Dosanjh had agreed to the sale. I do not accept that. It appears to me that Mr Balendran's original answer was his spontaneous recollection of the instruction of the architects, which he modified when the implications of this were put to him.

63. What is clear is that H&B, of which Mr Balendran was an officer and shareholder, was proposing to enhance the value of Aldwych House and Mr Balendran did not tell Mr Dosanjh about this, although he maintained that Mr Dosanjh must have realised that this is what would happen. A valuation report prepared later in the year suggested that planning permission would increase the value by some £80,000. Mr Dosanjh's evidence is that the attempt to obtain planning permission by H&B was not drawn to his attention until later that year as the sale progressed. I accept that. On 26th September 2022, Knights wrote to Mr Balendran as follows:

> "26. Earlier this month, our client became aware of the following matters:
>
> a. On 27 June 2022, H&B made an application to determine if prior approval was required for a proposed change of use of Aldwych House from Commercial, Business and Service (Use Class E) to dwelling houses (Use Class C3).
>
> b. On the same date, H&B submitted proposed plans to the planning authority for the commercial premises to be converted into 11 two-bedroom residential flats and 1 one-bedroom residential flat. The plans appear to have been finalised in February 2022.
>
> c. On the same date H&B submitted a Transport Note prepared by Magna Transport Planning Ltd to support a planning application for the proposed change of use of Aldwych House.
>
> d. On 30 August 2022, the planning authority confirmed that prior approval was required for the change of use and that prior approval was in fact granted.
>
> 27. You did not disclose any of the above matters to our client. It is apparent that you (through H&B) have been taking steps since February 2022 at the latest to secure approval for the change of use of Aldwych House."

64. Self-evidently, Mr Balendran had placed himself in a position where his interest as a shareholder of H&B and his duty to that company conflicted with his duty to Webb. He did not appear to appreciate or accept this. Instead, he blamed Mr Dosanjh for not proceeding with the sale. His response to Knights' letter on the following day was to say:

> "Regarding Aldwych House, if he changed his mind because it has now planning permission then it is not simple. Your client must compensate the expenses incurred by Harish to get planning permission. Compensate for the risks he took in buying a property without planning permission. Attached report by CSquared, same valuer estimates the value as £910k after the planning permission. Therefore, I believe Harish is entitled to a compensation of more than £460k. In addition your client must also compensate the company for the rates liabilities, and other expenses."

Mr Balendran's focus appears to be on the loss caused, as he saw it, to Harish Josgray of H&B, rather than the potential loss to Webb of selling the property at a lower price than it could have attained with planning permission. Indeed, as recently as November 2023, an open offer of settlement made by Mr Balendran sought compensation for H&B in respect of the aborted sale.

65. Mr Dosanjh's decision not to allow the sale to proceed may have been commercially hard-nosed and, on Mr Balendran's case, might indeed have ultimately led to a less advantageous position for the Company once the ongoing liabilities to which Webb was subject in respect of the building are taken into account, but it does not seem to me to show any impropriety on the part of Mr Dosanjh. Contracts had not been exchanged and Webb was free not to proceed with the transaction. I can entirely understand why Mr Dosanjh would have been reluctant to proceed with a transaction in which his fellow director had a personal interest about which he had not been transparent. It is similarly clear that Mr Balendran's conduct in respect of the sale of Aldwych House would have been fatal to any remaining relationship of trust and confidence between the parties.

Proposals for resolution and ongoing dispute

66. Mr Dosanjh's evidence explains an early attempt as settlement as follows:

> "51. In the Autumn of 2021, Victor and I agreed to instruct some independent experts to see whether they could help us find an amicable resolution. Macintyre Hudson were instructed to report on the appropriateness of the treatment of the payments within the accounts and FRP Advisory were instructed to advise on a way of resolving the deadlock by way of structured wind-down.
>
> 52. On 23 December 2021, we received a report from Macintyre Hudson. The report confirmed that it would not be appropriate for me to raise an invoice to WEDL to treat payments made to me as services as I had not provided

> chargeable services to the company. The report also stated that whilst from an accounting perspective it was acceptable to treat Victor's payment as invoiced expenditure, to do so would create an inequality between the shareholders as my loan account balance would be reduced and Victor's would not. Consequently, I felt that the report vindicated my concerns which led to my original email on 3 March 2020. Victor's interpretation of the report was completely different.
>
> 53. Ben Stanyon of FRP Advisory gave advice via a video meeting on 30 November 2021 at which both Victor and I were present. Mr Stanyon advised that Victor and I could agree to a structured de-merger of the Company pursuant to section 110 of the Insolvency Act 1986. It was explained that this would mean setting up two subsidiary companies into which a share of the assets and liabilities would be transferred. Victor and I would then each become shareholders of one company and WEDL would be liquidated. We needed the support of Lloyds Bank (who were aware of the issues between Victor and I) but otherwise it appeared to be a perfect solution. Victor appeared supportive of the idea."

67. Mr Dosanjh did indeed contact Mr Nigel Thompson of Lloyds on 30th November 2021:

> "As you know, Victor and I have been experiencing some issues in reaching an agreement with regards to the filing of Accounts. The Accounts that Victor has chosen to file for year ending 31st July 2020 are not acceptable to me as these understate the profits made and therefore potentially leave the company, in my view, open to HMRC investigation. Victor and I working with FRP, as an independent entity, to advise a way forward. Ben Stanyon of FRP is copied on this email. We have also instructed independent Accountants to advise on the tax matters for the company and the treatment of drawings. Victor and I have agreed for FRP to make contact with you to agree a way forward."

Mr Balendran responded on 5th November 2021:

> "I refer to the e-mail from Peter, copy below.
>
> Apologies for dragging you into this at this stage.
>
> As you know I was not in favour of MVL proposed by Peter previously and I will not agree to any form of MVL I have agreed to explore the 'demerger of the company using section 110' and moving the assets of the company into two subsidiaries. However, we have not made any decision yet. There was a brief telephone conference discussion about equal share distribution, but the discussion quickly moved onto

> individual asset valuations. I am not sure how this will work. I am trying to understand with open mind
>
> I do not wish to pay for valuation without a clear understanding of purpose. When we are ready, any valuations will be in conjunction with Lloyds and in concurrence with both shareholders.
>
> Company business is healthy. Out of nine assets in the company, we sold one (Acton Gate), another (Aldwych House) we are about to exchange contract, we have offers for four more. All offers are more than the previous valuations by Lloyds approved valuers, therefore absolutely no reason to be concerned. Currently we are just exploring the best options available to both shareholders to make an informed decision. I will contact you as soon as we reach that decision.
>
> Regarding the allegation that the account submitted 'understates the profit', is simply not true. Accounts filed is accurate and correctly reported the amount taken out as expenses (£7k monthly, each) by both shareholders. Therefore, company profit reduced and tax liability also reduced by the same amount. This means, both shareholders individually pay tax for the amount taken out as expenses. Peter does not want to pay this tax personally, he wants the company to pay all taxes, report excess profits and report the expenses as drawings. This will undermine my financial position as I manage the business, assets, services and I have expenses to recover. Currently I am paying taxes from both sides of my businesses.
>
> To resolve this matter fairly, already an independent charted accountant proposed an accurate way of accounting, but it is not acceptable to Peter (Copy of the report attached for your information). Therefore, company agreed to get another independent charted accountant to review the above proposal. Company will accept a revised proposal if it is fair and better for both shareholders. We will find a way forward and I keep you informed."

Lloyds confirmed its support for the demerger on 17th January 2022:

> "Further to your email, I would be happy to support you both individually following the de merger of the company, we would need treat this as new deals so will need to complete my credit assessment in the normal way.
>
> It will be also subject to credit approval.
>
> I would suggest that you use a bank valuer from our panel, I will need to arrange this for you as this will save you further cost."

Mr Balendran resiled from the proposal by an email to Mr Thompson on the same day. He said:

> "I refer to the e-mail from Peter today regarding 'de merger'. I am advised that 'de merger' is another form of MVL. MVL would be a disaster for the company. I will not agree to it. Company trying to take credible advice on this matter.
>
> Kindly ignore any request regarding de merger in the meantime please."

Mr Balendran said in his oral evidence that he was not in favour of selling the Company's assets at the same time.

68. There was a shareholders' meeting on 23rd June 2023, which does not seem to have led to any further progress. Again, at a further meeting on 10th September 2024, Mr Dosanjh alleges that the meeting became heated and Mr Balendran declined to discuss anything other than the sale of Aldwych House to H&B. Again, this is not agreed by Mr Balendran.

69. Lloyds confirmed that it was not prepared to refinance the Company's existing borrowing by a letter on 9th September 2024. It formally demanded repayment of the Company's outstanding loan of £970,055.32 on 1st October 2024. That is not the only liability facing Webb. There are others and they have generated yet further dispute between the parties. By way of example –

    i) First, the Company is subject to liability orders in respect of Aldwych House obtained by Test Valley Borough Council. Mr Balendran disputes that the sums have been correctly charged, but he did not attend the hearing before the magistrates and the liability orders were granted. He appeared to think that Mr Dosanjh should have attended the hearing but Mr Dosanjh's position is that he accepted that the non-domestic rates were due so it was not at all clear what Mr Balendran expected Mr Dosanjh to say. Yet again, he seems to have thought that Mr Dosanjh should simply accept his position. He maintained that H&B were the occupiers of Aldwych House on the basis that they had started redevelopment work and were stripping out the property. Whoever might be right, it is clear that the parties do not agree and have been unable to find an mechanism by which this can be resolved. In July 2024, the local authority indicated that it would not take recovery action until these proceedings were determined. Mr Balendran dismissed it as a "minor matter" but clearly remains of the view that these sums are not chargeable.

    ii) Secondly, there is a dispute in relation to a tenancy at the Company's property at Windmill Road, Croydon. Mr Balendran declined to consent to a sub-letting by the tenant, contrary to Mr Dosanjh's wishes. As a result the tenant brought proceedings against the Company in September 2023. The longer term plans for this property are also in issue. On 29th March 2021 Knights wrote to the solicitors then acting for Mr Balendran and identified the potential difficulties facing a sale of this site:

> "A final example of the issues which have contributed to the deadlock situation which our respective clients now find themselves in is as follows. The Company owns property at 78 Windmill Road, Croydon (Site) and has secured planning permission to build 9 flats at the Site. The planning permission clearly states that it will expire on 9 August 2021. We are instructed that your client has refused to allow any works to begin at the Site and is insisting that the Site should first be sold by the Company to our clients in their personal capacities in order to reduce the tax payable on the development. This delay may result in the planning permission expiring and the Company having to apply for fresh planning permission, which is clearly not in the best interests of the Company or our respective clients as further costs will be incurred, and the opportunity to develop lost all together if planning permission is refused. All of our client's rights and remedies in relation to any personal actions that he may have against your client as a result of his unreasonable conduct in this respect are expressly reserved."

The planning permission in respect of this property has indeed lapsed. Mr Balendran's position at trial was that he wished to obtain planning permission, the time frame for which is unclear. What is clear is that Mr Balendran has firm views about the way in which this property is to be prepared for sale, which are not shared by Mr Dosanjh, which are likely to lead to further disagreement between the parties.

iii) Thirdly, Mr Balendran similarly wishes to obtain planning permission for a property at 116 High Street, Staines, which Mr Dosanjh thinks is unlikely.

iv) Fourthly, the parties are at odds as to the Company's corporation tax liabilities. While most, if not all of this, relates to the treatment of the monthly payments, there continues to be a wider dispute as to the accuracy of the accounts filed. It appears that Mr Dosanjh has been paying these liabilities in the absence of agreement from Mr Balendran. Indeed, such was Mr Balendran's objection to the payment of these that he wrote to the Company's bankers, Lloyds, on 21st April 2022 to inform them that he had "taken control of the company temporarily".

Disposition

70. It is plain that there has been an irretrievable breakdown in the relationship of trust and confidence. The management of the Company is also functionally deadlocked. While Mr Balendran's constant refrain was that the areas of disagreement were "minor matters" and that he was prepared to be flexible, he has adopted an entirely entrenched position, in particular in regard to the treatment of the monthly payments in the Company's financial statements, which Mr Dosanjh was right to reject as improper. Plainly the parties are unable to reach agreement on the conduct of the Company's affairs. While Mr Balendran did not formally admit this in his points of defence, both he and the solicitors acting for him from time to time have recognised

the reality of the situation consistently. Most recently in a letter of 26th November 2024, Logan Kingsley said "we agree it is clear both are at functional deadlock".

71. It is true that since Mr Balendran's first expression of a desire to sell the properties in 2019, two were finally sold in mid or late 2024, Aldwych House has recently sold at auction and the sale of Sepulchre Gate was due to complete at around the time of the trial. The progress in concluding the Company's business has, however, been glacially slow. I accept Mr Woodhead's submission that these late flurries of activity were prompted by the trial and that the sale of the remaining seven properties is likely to be mired in further disagreement and intransigence on the part of Mr Balendran. Indeed, Mr Pipe described his client as "awkward" and "infuriating", albeit no more so than when the parties decided to carry on business together, who would stick to his guns and do what he believed to be right. I am afraid that that is likely to be so, no matter how wrong-headed Mr Balendran's belief might be. The accounts are still not agreed and, as I have explained, the dispute as to their accuracy extends beyond the treatment of the of the monthly payments. The Company simply cannot function as a result of the directors' inability to agree.

72. Either of those grounds entitles Mr Dosanjh to the relief he seeks. The only question is whether he is unreasonable in seeking winding up rather than some other remedy. In my judgment he is not. Indeed, there is no realistic alternative other than winding up. Mr Dosanjh does not wish to buy Mr Balendran's shares. Mr Balendran made a low offer to purchase Mr Dosanjh's shares, which on the evidence as to value of the properties that now seems to be broadly accepted, was unrealistic and Mr Dosanjh cannot be criticised for rejecting it. Following trial, a further firm of solicitors, Higgs LLP, now instructed by Mr Balendran, wrote to Knights, and filed at court, a proposal to acquire Mr Dosanjh's shares and proof of an offer in principle of a bridging loan in the sum of £1.2 million. That loan is expressed to be subject to valuation of the properties and "lender requirements". Such a purchase is thus subject to a number of contingencies and despite the proposal that Mr Balendran will "honour any valuation" carried out by a valuer it is apparent to me, having heard from Mr Balendran, that such a proposal is a recipe for yet further dispute and disagreement, not least as to the basis on which the properties should be valued. Even if that proposal might have a prospect of success, given the lengthy disagreement between the parties it is not at all unreasonable for Mr Dosanjh to seek to wind up the Company's affairs by compulsory liquidation.

73. I bear in mind the submissions made on Mr Balendran's behalf that a compulsory winding up may yield a lower return on the sale of the properties than would be obtained on a sale by the directors. That does not necessarily follow but there is in my judgment no realistic alternative in circumstances where the relationship between the parties has so totally broken down and they are unable to agree on fundamental matters concerning the management of the Company.

74. There is no basis to deprive Mr Dosanjh of a remedy on the basis of the filing of unapproved accounts. He should not have done so but his concern, I accept, was to prevent Webb being struck off the register in the face of a fellow director who refused to accept either the proper treatment of the monthly payments or at the very least that it was obviously improper to seek to attribute the payments to a fictious arrangement between the Company and TRS.

75. Nor is there any reason to suppose that Mr Dosanjh is seeking to use the petition for an improper ulterior purpose. While the points of defence make such an assertion, it has never been particularised and nor was Mr Balendran able to articulate a case on this in the course of his evidence. The highest it has been put is the submission by Mr Pipe that the petition is a pressure tactic by a wealthy shareholder. I reject this. The breakdown in the relationship and the deadlock is such that it is entirely unsurprising that Mr Dosanjh resorted to petitioning for the winding up of the Company. Any pressure brought to bear on Mr Balendran by these proceedings has been matched by his vigorous opposition to them.

76. In the circumstances, the proper order to make on the handing down of this judgment is that the Company be wound up by the court. I will therefore make the usual compulsory order. I shall ask counsel for Mr Dosanjh to draw up an order giving effect to that and, if possible, deal with any other outstanding matters by agreement. If costs and any other consequential matters cannot be agreed I shall list a short hearing to determine them.